(2)

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR (M.P.).

CRIMINAL APPEAL NO. 1184 OF 1999.

APPELLANT .. GULAB Son of Pyari Satnami,
aged about 66 years,
Resident of Katulbod
District Durg, M.P.
(in Jail)

(5563)

23/4/99

Filed on 4/5/99 by Shri Nishm Advocate

Rlo. A. R.

VERSUS

RESPONDENT NON-APPLICANT .. STATE OF M.P.

CONVICTION	SENTENCE
Under Section 302 IPC.	Life Imprisonment and fine of Rs.5000/-, In default of payment of fine R.I. for Additional two years.

APPEAL UNDER SECTION 374 OF THE CODE OF CRIMINAL PROCEDURE.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक C.A. No. 1184/99 **सन् 200**

आदेश पत्रक (पूर्वानुबंध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench:

Hon'ble Mr. L.C. Bhadoo &
Hon'ble Mr. Dhirendra Mishra, JJ

28.2.2007

Mr. Awadh Tripathi, Advocate for the appellant.

Mr. M.P.S. Bhatia, Panel Lawyer for the State.

Oral judgment dictated on *Dais.*

Per L.C. Bhadoo, J.

This appeal is directed against the judgment of conviction and order of sentence dated 10th March, 1999 passed by the 4th Additional Sessions Judge, Durg in Sessions Trial No.154/98 whereby the Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C, for committing murder of Inder Bai, sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo rigorous imprisonment for two years.

The case of the prosecution, in brief, is that in the evening of 27.1.1998 at about 5.00 p.m. Sagun Bai (PW-5), her sister Bugli Bai (PW-10), Hembai were taking tea in front of the house of Sarojbai, at that time Inder Bai (since deceased), mother of Sagun Bai & Bugli Bai, went to collect the woods. When Inder Bai did not return for 10-15 minutes,

O.T.S. P.T.O.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Sagun Bai went that side to see her, she heard the sound and when she saw towards that side, she saw that accused was assaulting her mother with the axe, on which she raised the cries 'save-save', upon which PW-10 Bugli Bai, Hembai came running. Accused ran away from the place of occurrence towards west side. Thereafter, PW-3 Kanti Bai came out of the house and saw that accused was running away carrying axe in his hand. Thereafter, they saw that Inder Bai was lying on the ground. The police was informed. The Station House Officer, Police Station Mohan Nagar received the information through control room at about 5.15 p.m. that Inder Bai has been murdered by Gulab Satnami with a sharp edged weapon at Village Katulborde. Receiving this information, Shri Ravindra Upadhyaya, Station House Officer, Police Station Mohan Nagar left for the scene of occurrence, saw Inder Bai lying on the ground and also the injuries on her temporal region. Based on that he reduced into writing Merg Intimation (Ex.P-8) and thereafter he prepared Dehati Nalishi (Ex.P-18). Merg Intimation & Dehati Nalishi were sent to the Police Station Mohan Nagar for registration of case upon which the First Information Report (Ex.P-22) was registered by Shri Ashok Sharma, Sub-Inspector. Shri Ravindra Upadhaya, S.H.O., prepared the inquest report (Ex.P-6) on the body of Inder Bai. Shirt and lungi of the accused were taken into possession under Ex.P-5. Axe, weapon of offence was seized under Ex.P-6. Body of deceased was sent for postmortem

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

examination to the District Hospital, Durg where Dr. V.R. Meshram (PW-1) conducted the postmortem on the body of deceased, prepared postmortem report Ex.P-1 and opined that the cause of death is shock and haemorrhage as a result of ante-mortem injuries. Site plan (Ex.P-9) was prepared by the Investigating Officer. Recovered articles were sent for chemical examination to the Forensic Science Laboratory, Raipur from where report Ex.P-23 was received.

After completion of usual investigation, charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class, Durg, who in turn committed the case to learned Sessions Judge, Durg from where learned Additional Sessions Judge has received the case on transfer for trial. The prosecution in order to establish the charge against the accused/appellant examined twelve witnesses. Statement of accused/appellant was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime.

After hearing learned counsel for respective parties and perusal of the record, learned Additional Sessions Judge convicted and sentenced the accused/appellant, as aforementioned.

We have heard Mr. Awadh Tripathi, counsel for the accused/appellant and Mr. M.P.S. Bhatia, Panel Lawyer for the State.

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Homicidal death of Inder Bai has not been disputed by learned counsel for the appellant. Moreover, in view of the ocular evidence of eyewitnesses Sagun Bai (PW-5), Bugli Bai (PW-10) as also the medical evidence of Dr. V.R. Meshra (PW-1), who conducted the postmortem examination on the body of deceased, it is established that the death of Inder Bai was homicidal in nature.

As far as the involvement of accused/appellant in crime in question is concerned, learned counsel for the appellant argued that Sagun Bai (PW-5) & Bugli Bai (PW-10), daughters of deceased, have been examined as eyewitnesses to the incident, but there are contradictions between their police diary statement and court evidence, therefore, their evidence cannot be said to be reliable. Moreover, independent witness Hembai has also not been examined. He placed reliance on the judgment of M.P. High Court in the matter of **State of M.P. Vs. Kishori @ Kishora and three others** reported in **2005 Cr.L.R. [M.P.] 386.**

On the other hand, learned Panel Lawyer for the State supports the judgment of the trial court.

In order to appreciate the argument advanced by learned counsel for the appellant, we have perused the evidence of eyewitnesses Sagun Bai (PW-5) & Bugli Bai (PW-10). Shakun Bai (PW-5) has stated that on the fateful day at about 5-6 p.m. she was at her residence, her mother went all alone to bring wood. When her mother did not return, she went

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

towards that side where her mother had gone, she saw that her mother was lying on the ground and the accused was assaulting her mother. Accused threatened her also that he will assault her with the axe, therefore, she became frightened and ran towards the betel shop where her cousin brother Rameshar was sitting. She informed him about the incident. PW-10 Bugli Bai, other daughter of the deceased has stated that about 4.30 p.m. in the evening she along with Hembai and Saroj were sitting at the residence of Dudhnath, they were talking, on hearing the cries of her sister Sagun that Gulab has attacked their mother she came out from the courtyard and saw that her mother was lying on the ground. Accused was having axe in his hand, in front of her accused assaulted on the right cheek of her mother by that axe and thereafter rushed towards her, therefore, she ran away from that place. Thereafter, the accused left the place carrying axe in his hand.

We have perused the police diary statement as also the court evidence of Sagun Bai. In police diary statement there is omission to the effect that this witness has stated that she herself, Bugli Bai & Saroj were taking tea in front of the house, whereas in the court evidence she has not stated that fact and has simply stated that when her mother went to collect the wood, she went towards that side.

Having perused the whole police diary statement of Sagun Bai in which she has categorically stated that she saw the accused attacking

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

her mother, we are of the considered opinion that there is no material contradiction in the substantial part of the police diary statement and the court evidence. Therefore, the above omission highlighted by learned counsel for the appellant does not affect the evidence of Sagun Bai. Moreover, the presence of Sagun Bai at the residence in the evening cannot be doubted, as the evidence of Sagun Bai is corroborated by the evidence of PW-10 Bugli Bai, PW-11 Savitri as also the doctor (PW-1), who conducted the postmortem on the body of deceased and found injuries on the right side of temporal region of the deceased.

PW-3 Kanti Bai has also stated in her evidence that on the fateful day at about 4.30-5.00 p.m. she was sitting at the residence of one Kishen. She heard the cries of her sister-in-law Sagun Bai 'save-save', when she came out of the house after hearing the cries, she saw that the accused was running away carrying blood stained axe in his hand, therefore, she went inside the house. When she again came out of the house of Kishen to go to police station, on the way Raju met her and she asked him to go with her to the police station.

In the cross-examination of Sagun Bai (PW-5) & Bugli Bai (PW-10) the defence has not been able to bring on record any material contradiction which makes the evidence of these witnesses unreliable or untrustworthy.

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As far as the judgment cited by learned counsel for the appellant is concerned, the facts of that case are distinguishable from the facts of present case. In that case, in fact, all material independent witnesses had turned hostile and only two witnesses, who were in close relation of the deceased, had deposed against the accused persons. In the evidence of those two witnesses there were material contradictions in the police diary statement and court evidence. PW-3 Sher Singh did not name any of four actual assailants in the police diary statement, there was animosity between the accused persons and those witnesses, therefore, the trial court did not find the evidence of those witnesses worth reliance. Whereas, in the present case the defence has not been able to bring on record anything which indicate that there was animosity between the accused and the deceased and that the evidence of Sagun Bai & Bugli Bai suffers from any infirmity.

Learned counsel for the appellant also argued that in the inquest report it has not been mentioned that the crime was committed by the appellant.

It is not necessary that in the inquest report the name of accused who committed the crime should be mentioned, however, in the merg intimation Ex.P-8, which was recorded within a gap of less than 2½ hours based on the control room message, the name of accused was mentioned, as such, promptly the name of accused was made known to the police and

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the same was entered in the Ex.P-8. Therefore,, this argument of learned counsel for the appellant also has no merit.

No other point has been argued by learned counsel for the appellant.

For the foregoing reasons, we are of the considered opinion that there is no illegality or infirmity in the judgment of trial court convicting and sentencing the accused for commission of murder of Inder Bai.

In the result, the appeal being devoid of merit is liable to be dismissed and it is accordingly dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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